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EXAMINER	
HARBECK, TIMOTHY M	

ART UNIT	PAPER NUMBER
3692	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/767,031	JOHNSON ET AL.	
	Examiner	Art Unit	
	Timothy M. Harbeck	3692	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 March 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This communication is in response to Applicants' application filed on March 5, 2007. In view of Applicants' claims, the election to one of the following inventions is deemed necessary. The restrictions are as stated below:

Election/Restrictions

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group 1: Claims 1-26 are drawn to a method and system for using a computer system to transfer gifts by calculating and displaying unrealized gains of assets in the donor investment portfolio

Group 2: Claims 41-50 are drawn to a method and system for using a computer system for enabling donor selection of assets form an investment portfolio for transferring as a gift to a receiving entity.

The inventions are distinct, each from the other because Inventions 1 and 2 are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, each invention has separate utility (See MPEP § 806.05d), specifically demonstrated as follows:

Invention 1:	calculating and displaying unrealized gain of each asset in the donor investment portfolio.

Invention 2: enabling donor selection of assets from a subject donor investment portfolio for transferring as a gift to a receiving entity;

Newly submitted claims 41-50 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: these inventions are distinct for being separately usable, as shown above, examining the inventions together would require searching for a reference teaching the unique element(s) of each invention that are not found in the remaining Inventions. This would be quite burdensome, requiring multiple searches, and thus the restriction for examination purposes, as indicated, is proper.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 41-50 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 23-24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims appear to be directed toward software.

Software, programming, instructions or code not claimed as encoded on computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in a computer. When such

descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases.

Furthermore, software, programming, instructions or code not claimed as being computer executable are not statutory because they are not capable of causing functional change in a computer. In contrast, when a claimed computer-readable medium encoded with a computer program defines structural and functional interrelationships between the computer and the program, and the computer is capable of executing the program, allowing the program's functionality to be realized, the program will be statutory.

Claims 23-24 therefore rejected where there is no indication that the proposed software is recorded on computer-readable medium and/or capable of execution by a computer. Examiner suggests that the applicant incorporate into Claim **** language that the proposed software is recorded on computer-readable medium and capable of execution by a computer to overcome this rejection.

Correction required. See MPEP § 2106 [R-2].

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 23-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention. These claims are directed toward a system, however there is no structural limitations in the claims that define what the system is comprised of. The claims appear to be directed toward a software of computer program application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-5 and 7-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keating ("The New Business of Giving." Peter Keating, Beverly Goodman. Money. New York: 1998. Vol.27, Iss. 13; pg 92, 3 pgs) in view of Slane (US ^,567,790 B1)).

Re Claim 1: Keating discloses a method for providing gifts including transfers of assets from a donor to a receiving entity comprising the steps of:

- Compiling donor investment portfolio data from each brokerage account associated with a subject donor investment portfolio
- Analyzing the subject donor investment portfolio and identifying assets representing tax efficient gift transfers from a donor to a receiving entity (See Abstract; "integrating donations with **financial planning, helping them with their tax write offs and coaching them in estate reduction**.)

Keating does not explicitly disclose the steps of:

- (i) Calculating and displaying unrealized gain of each asset in the donor investment portfolio and (ii) for each asset in the subject donor investment portfolio, calculating and displaying estimated tax savings achievable by transferring the asset as a gift from the subject donor investment portfolio to the receiving entity and;
- Enabling donor selection of specific assets from the subject donor investment portfolio for transferring as a gift to the receiving entity, and (ii) donor authorization of the gift of the selected assets such that tax valuation of each donor selected asset is defined (a) as a function of moment of the donor authorization of the gift independent of transfer of each selected asset to the receiving entity and (b) as a result of an agency relationship with the receiving entity

Slane discloses a system and method for establishing and managing grantor retained annuity trusts funded by nonqualified stock options. According to the Slane invention a donor establishes a Grantor Retained Annuity Trust (GRAT) and transferes stock options and other assets to the GRAT (Column 1, lines 54-57). The taxes on the transfer of the assets are minimized by calculating an optimum annuity percentage to reduce the value of the taxable gift and minimizing estate taxes through use of the GRAT. In addition, when any assets, including stock options are transferred to a GRAT a percentage of the original value of the assets in the GRAT must be selected for the annuity to the grantor. The grantor is responsible for paying any gift tax due (tax valuation as moment of donor authorization), and at the end of the GRAT's term stock

options or other assets go to the beneficiaries of the GRAT who are selected family members (agency relationship with the receiving entity). It would have been obvious to a person of ordinary skill in the art at the time of invention to include the teachings of Slane to the disclosure of Keating in order to address the transfer tax consequences involved in stock option compensation schemes.

Re Claim 2: Keating in view of SLANE discloses the claimed method supra and while not explicitly disclosing wherein the receiving entity is a non-profit organization, Keating does disclose wherein the receiving entity is a "charitable fund," which would be obvious to anyone skilled in the ordinary art at the time of invention to include non-profit organizations under this broad definition.

Re Claim 3: Keating in view of SLANE discloses the claimed method supra and SLANE further discloses wherein the non-profit organization is a donor advised organization.

Re Claims 4-5: Keating in view of SLANE discloses the claimed method supra and while not explicitly disclosing the steps of sorting and/or grouping of calculated or displayed data items, this practice was well known to anyone familiar with computerized spreadsheets such as Microsoft Excel. The advantages of these manipulations of data are obvious in that it allows the user to compare and contrast lines of data with respect to certain variables and thus providing a more complete view of the data as a whole.

Re Claim 7: Keating in view of SLANE discloses the claimed method supra and while not explicitly disclosing the step comprising electronically transferring cash to the receiving entity instead of assets from the subject donor investment portfolio if the donor

selected assets in the subject donor investment portfolio provide an estimated tax savings that is below a predefined threshold, this step would have been obvious to someone skilled in the ordinary art at the time of invention because this is what a financial planner/advisor such as the one mentioned in Keating is trained and hired to do. A financial planner is interested in maximizing the financial benefit of his client and if it is in the best interest of said client to transfer cash instead of portfolio assets to the receiving entity than the financial planner would inherently do so.

Re Claim 8: Keating in view of SLANE discloses the claimed method supra and as admitted by applicant on page 6 of the disclosure, it was well known in the art at the time of invention to repurchase a substantially similar asset immediately upon transferring the donor-selected asset to the receiving entity.

Re Claim 9: Keating in view of SLANE discloses the claimed method supra and as admitted by applicant on page 6 of the disclosure, it was well known in the art at the time of invention to repurchase a substantially similar asset, and cross matching this repurchase with the sale of the donor selected asset would have been obvious to keep from spending down the value of the donor's investment portfolio.

Re Claim 10: Keating in view of SLANE discloses the claimed methods supra and while not explicitly disclosing the steps wherein the subsequent transfer of the asset are completely computer automated by predefining parameters for the selection, transfer and repurchase of assets, automatically selecting specific assets from the subject donor investment portfolio for transferring based upon the predefined parameters and electronically transferring the selected assets to the receiving entity, it

was well known in the art at the time of invention to use automated means to complete a variety of financial transactions. Many online programs allow clients to make trades regarding securities and further allow them to set parameters with regards to these transactions (i.e. a stop or limit order) and follow these guidelines automatically for the client. In this way the client can be assured that desired transactions are carried out once certain thresholds are reached without having to constantly monitor the trading environment. Because these programs were so well known in the art and advantageous for a client in that they save time and effort with regards to transactions, it would have been obvious to use this system for transferring assets to donor selected charities.

Re Claim 11: Keating in view of SLANE discloses the claimed method supra and as admitted by applicant on page 6 of the disclosure, it was well known in the art at the time of invention to repurchase a substantially similar asset immediately upon transferring the donor-selected asset to the receiving entity and further automating this process is well within the skill of someone in the ordinary art.

Re Claim 12: Keating in view of SLANE discloses the claimed method supra and while not explicitly noting the parameters as a frequency of transfer value, an amount of transfer value, and asset allocation and an identification of charities to which to transfer assets, as was noted in the previous rejection of claim 10, many online programs allow clients to make trades regarding securities and further allow them to set parameters with regards to these transactions (i.e. a stop or limit order) and follow these guidelines automatically for the client. In this way the client can be assured that desired

transactions are carried out once certain thresholds are reached without having to constantly monitor the trading environment. The parameters can be anything related to the transaction and could include the aforementioned attributes. Furthermore Keating does note that the donor can personally identify the charity to which to transfer the assets (Pg 2, paragraph 4).

Re Claim 13: Keating in view of SLANE discloses the claimed method supra and while not explicitly disclosing the step wherein the subject donor investment portfolio is maintained through a qualified retirement plan, it is well known throughout the art that investment portfolio's are often maintained through qualified retirement plans (401k's, IRA's ect) and therefore would have been obvious to one of ordinary skill.

Re Claim 14: Keating discloses a method for transferring assets as gifts from a donor to a receiving entity, but does not explicitly disclose wherein these steps are computer implemented and the donor controls the price and timing at which the asset is given and the transaction is automatically initiated based upon these parameters. Finally Keating does not explicitly disclose the step of determining for the donor, tax efficiency of the desired transfer as of the donor predefined time, the tax efficiency being determined as a function of dollar value of the donor selected asset as of the donor predefined time of the desired transfer.

It was well known in the art at the time of invention to use automated means to complete a variety of financial transactions. Many online programs allow clients to make trades regarding securities and further allow them to set parameters with regards to these transactions (such as price and time of transaction) and follow these guidelines

automatically for the client. In this way the client can be assured that desired transactions are carried out once certain thresholds are reached without having to constantly monitor the trading environment. Because these programs were so well known in the art and advantageous for a client in that they save time and effort with regards to transactions, it would have been obvious to use this system for transferring assets to donor selected charities.

Slane discloses a system and method for establishing and managing grantor retained annuity trusts funded by nonqualified stock options. According to the Slane invention a donor establishes a Grantor Retained Annuity Trust (GRAT) and transferes stock options and other assets to the GRAT (Column 1, lines 54-57). The taxes on the transfer of the assets are minimized by calculating an optimum annuity percentage to reduce the value of the taxable gift and minimizing estate taxes through use of the GRAT. In addition, when any assets, including stock options are transferred to a GRAT a percentage of the original value of the assets in the GRAT must be selected for the annuity to the grantor. The grantor is responsible for paying any gift tax due (tax valuation as moment of donor authorization), and at the end of the GRAT's term stock options or other assets go to the beneficiaries of the GRAT who are selected family members (agency relationship with the receiving entity). It would have been obvious to a person of ordinary skill in the art at the time of invention to include the teachings of Slane to the disclosure of Keating in order to address the transfer tax consequences involved in stock option compensation schemes.

Re Claim 15: Keating in view of SLANE discloses the claimed method supra and while not explicitly disclosing the pricing and timing techniques of claim 15, these techniques are notoriously well known in the art and would have been obvious to anyone of ordinary skill seeking to set limits with regards to the transfer of a financial asset.

Re Claim 16: Keating in view of SLANE discloses the claimed method supra and while not explicitly disclosing the step of enabling the entity to immediately instruct the broker to sell the selected asset at substantially the same transfer timing price selected by the donor, this option is always available to the receiving entity. Once ownership is transferred to the entity, the new owner has the authority to do with the security what they please, including instructing the broker to sell the security immediately. Furthermore the receiving entity would be inclined to perform this step in order to liquidate the security into a medium (cash) in which the charity can garner some benefit.

Re Claim 17: Keating in view of SLANE discloses the claimed method supra and while not explicitly disclosing the step of creating a list of donor assets, monitoring said list and electronically notifying the donor when the asset price of one of the monitored assets reaches a predefined price, these steps again were well known in the art at the time of invention. The online financial transaction websites mentioned numerous times in previous claims allowed users to create a set of rules for each security (asset) in their portfolio with regards to the sale of said securities. These rules included the automatic transfer of the asset once a certain threshold was reached,

however a user could also set the rules to simply alert them once the parameters were met. The user could then reevaluate their position and either sell the security or continue to hold base upon their forecast of that asset. These techniques were also known before the advent of electronic financial transactions, as a personal broker would monitor and contact a client if certain rules are met. Because these steps were well known in the art and provide the customer with greater flexibility regarding the sale of an asset it would have been obvious to anyone of ordinary skill to implement these steps.

Re Claim 18: Keating in view of SLANE discloses the claimed method supra and while not explicitly disclosing the step of instantly recording a tax deduction that the donor will receive for transferring the donor selected asset to the receiving entity including recording an exact price of the asset at the time the asset is transferred to the receiving entity, SLANE has disclosed that the grantor is responsible for paying any gift tax due at the time of donation (Column 2, lines 63-66). Furthermore this step of recording the deduction immediately is an accepted accounting practice used well before the implementation of computer based systems and would have been obvious to one of ordinary skill.

Re Claims 19-20: Keating in view of SLANE discloses the claimed method supra and while not explicitly disclosing how the exact price of the asset is calculated, using the bid and ask price or the value of the last trade were well known methods for doing so and would have been obvious to anyone of ordinary skill because they were excepted practices.

Re Claim 21: Keating in view of SLANE discloses the claimed method supra and while not explicitly disclosing allowing the donor to specify the recommended time interval, or price at which the asset is to be sold by the receiving entity after the desired transfer is complete, this is a typical or a GRAT disclosed in SLANE. These accounts are set up by the donor in order to give the donor greater authority with regards to his donations. The donor can establish conditions upon which the transfer of assets occurs. One such scenario is defining the time at which the trust expires. One would be motivated to do this possibly for tax purposes in a given year, perhaps to claim the deduction in one year, but then setting conditions for the actual liquidation of the asset by the receiving entity if the donor feels there is more value in holding the asset for a specified period of time. In this way both the donor and receiving entity benefit.

Re Claim 22: Keating in view of SLANE discloses the claimed method supra and while not explicitly disclosing wherein the tax deduction value is selectable using the asset price at the time of the desired transfer or the average of the asset's high price and the asset's low price for the day, these methods for evaluating a tax deduction regarding an asset were notoriously well known in the art. One would be motivated to select one of these methods because they are established methods and would provide the donor with the best possible tax benefit.

Re Claim 23: Further computer system claim would have been obvious to perform the steps of previously rejected method claims, specifically claims 10 and 14, and is therefore rejected using the same art and rationale.

Re Claim 24: Keating in view or SLANE discloses the claimed system supra and while not explicitly disclosing the step wherein a single or multiple assets may be selected and transferred using a single computer interface action, this step was well known in the art using common online financial transaction interfaces such as E-Trade and therefore would have been obvious to implement into a similar online charitable donor system.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Keating in view of Slane and further in view of The Fidelity Charitable Gift Fund Program Circular (hereinafter Fidelity found via the WayBack Machine http://web.archive.org/web/20000123054942/www301charitablegift.org/establish/index, 12/22/1999, specifically note the link at the top of the page to the PDF document)

Re Claim 6: Keating in view of Slane discloses the claimed method supra but does not explicitly disclose the steps of enabling the donor to specify in terms of a dollar amount to transfer to the receiving entity; and automatically selecting assets from the subject donor investment portfolio such that the current dollar value of the selected assets is substantially the same as the donor specified dollar amount to transfer.

Fidelity outlines the Fidelity Charitable Gift Fund, which is a donor advised fund. Under the grant making portion of this document, it is disclosed that the donor can specify a dollar amount to transfer to the receiving entity and the system automatically selects assets from the subject donor investment portfolio such that the current value of the selected assets is substantially the same as the donor specified dollar amount to transfer (pgs 8-9)

It would have been obvious to someone skilled in the ordinary art at the time of invention to include the teachings of Fidelity to the disclosure of Keating in view of Slane because this is essentially the function of a donor advised fund. The donor would like some control of the donations made to the receiving entities without the hassle of performing the transfer himself. The donor then only has to concern himself with the amount to donate as opposed to where said amount is to be drawn from and can therefore save time and effort in the process.

Claims 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keating in view of Slane as applied to claim 1 above, and further in view of "America's Charities Selects DonorNet as Exclusive E-Commerce Provider." (Hereinafter Editors, Business Editors. Business Wire. New York: Jun 1, 1999. pg.1).

Re Claim 25: Keating in view of CGF discloses the claimed method supra but does not explicitly disclose the steps of

- Identifying a proxy organization having a relationship to the receiving entity allowing the proxy organization to receive an asset transfer on behalf of the receiving entity
- Representing the proxy organization to the donor such that the donor may not be aware that the proxy organization is receiving the donor selected assets on behalf of the receiving entity;
- Receiving each donor selected asset transferred from the subject donor investment portfolio to the proxy organization

- For each donor selected asset electronically transferring from the proxy organization to the receiving entity either the asset or cash proceeds form the sale of the asset by the proxy organization and;
- Issuing to the donor a tax receipt for each user-selected asset transferred in the name of the receiving entity.

Editors is an article disclosing DonorNet, a company that provides online solutions to charities, thus enhancing the charities abilities to interact with donors. DonorNet, in this instance represents a proxy organization that performs the steps as claimed, including online and donation pledge processing. It would have been obvious to anyone skilled in the ordinary art at the time of invention to include the features of Editors to the disclosure of Keating in view of Slane so that charities do not have to develop or maintain a complex system for online donations, but can simply outsource these capabilities to proxy organizations like DonorNet and simply inherit the ultimate donation as cash.

Re Claim 26: The Keating / Slane/ Editors combination discloses the claimed method supra and while not explicitly disclosing the step wherein the proxy organization guarantees that the received asset or the cash proceeds from the sale of the asset will always be transferred to the receiving entity, this would be obvious to anyone skilled in the ordinary art because it is good business practice. If the donor and receiving entity cannot be assured that the proxy organization will complete the desired transaction, then they would not use the system. They would find other means to make the

transaction in order to guarantee that the proceeds reach the intended destination because that is ultimately the goal of the transaction.

Response to Arguments

Applicant's arguments with respect to claims 1-26 have been considered but are moot in view of the new ground(s) of rejection.

Claims 23 and 24 have been rejected as non-statutory for being directed toward software. The inclusion of structural elements for the system claim is suggested. In addition claims 23 and 24 are directed toward the intended use of a particular system. It is further suggested that applicant amend the claims to remove the language typically associated with such claims (i.e. a system program ***for*** controlling; and selecting specific assets from the donor investment portfolio ***for*** transferring).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Harbeck whose telephone number is 571-272-8123. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Fischer can be reached on 571-272-6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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